

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Ursula Mitchum,

C/A No.: 0:13-1601-JFA-SVH

Plaintiff,

v.

ORDER

USAA Federal Savings Bank;
and Mark H. Wright,

Defendants.

The Magistrate Judge has filed a Report and Recommendation suggesting that this action should be remanded to the South Carolina Court of Common Pleas, where it was originally filed and from which it was removed. This recommendation is based upon the fact that the plaintiff does not expressly rely upon any federal statute or case law and, because no federal authority has been invoked by the plaintiff, this court lacks jurisdiction over the subject matter.

Defendant has timely objected to the Report and Recommendation, suggesting that there is no authority under South Carolina state law for a consumer to recover against a credit card company for a credit card purchase in which the merchant failed to deliver goods purchased by the plaintiff. Thus, defendant argues, the Federal Fair Credit Billing Act (FCBA), 15 U.S.C. §§ 1666, 1666i, 1666j and actionable under 15 U.S.C. § 1640, does allow for a direct action against the credit card company in certain circumstances, is the only claim available to the plaintiff.

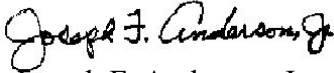
The court wishes to have input from the plaintiff as to the basis of his claim. Within fourteen days of the date of this order, the plaintiff should file a pleading with this court setting forth whether he intends to go forward with his claim relying upon South Carolina state law only

or whether he, in fact, proposes to avail himself of the FCBA. Plaintiff is advised that if he elects to pursue a state court remedy alone, the court would document this concession in an order remanding the case to state court, so that the plaintiff would not be allowed to amend the pleadings in state court and assert a federal claim there.

The court has prepared a response form which the plaintiff may use to respond to the court's inquiry. This form must be received by the Clerk of Court within fourteen days of the date of this order.

IT IS SO ORDERED.

August 12, 2013
Columbia, South Carolina


Joseph F. Anderson, Jr.
United States District Judge

Ursula Mitchum
2349 Dover Lane
Lancaster, SC 29720

Clerk of Court
United States District Court
for the District of South Carolina
901 Richland Street
Columbia, SC 29201

Re: Mitchum v. USAA, C/A No. 0:13-1601-JFA-SVH

Dear Clerk:

In response to Judge Anderson's question, I wish to advise as follows:

- ☐ I intend to rely on South Carolina state law alone in asserting my claim in this case.
- ☐ I intend to rely on federal law in asserting my claims in this case.

Ursula Mitchum

Date: _____